

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FREDERICK ALONZO WALLER,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:06-0844
)	Judge Echols
)	
MICHAEL EBY, et al.,)	
)	
Defendants.)	

ORDER

This matter is before the Court on a Report and Recommendation (R & R) (Docket Entry No. 37) in which the Magistrate Judge recommends granting Motions to Dismiss filed by the Defendants and dismissing this action with prejudice. The R & R was issued on August 31, 2007, and Plaintiff has filed no objections thereto, even though he was informed in the R & R that any objections needed to be filed within ten (10) days (Docket Entry No. 37 at 12).

This is an action brought pursuant to 42 U.S.C. § 1983 for alleged violations of the Fourth Amendment. Plaintiff's luggage was searched which resulted in his arrest for possession of firearms by a convicted felon. Ultimately, the search was found to be unreasonable under the Fourth Amendment and the criminal charges against Plaintiff were dismissed. He subsequently filed this suit against the police officers involved in the search, Detective

Michael Eby and Officer Joseph Helmintoller, the ATF agent who investigated the case, John Hand, and the United States.

In the R & R, the Magistrate Judge recommends dismissal of the claims against the federal Defendants because the United States enjoys sovereign immunity from claims brought under 42 U.S.C. § 1983 and Agent Hand is not a state actor for purposes of that statute. Moreover, even if Plaintiff's claim can be said to assert a Bivens action pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), the United States is immune from such actions and no claim can be asserted against Agent Hand for an improper search because he had no personal involvement in the search of Plaintiff's luggage. The Magistrate Judge also recommends dismissal of the action against the state Defendants, Detective Eby and Officer Helmintoller, because Plaintiff's claim is barred by the statute of limitations under prevailing Sixth Circuit law.

Where, as here, no objections are made to the R & R, "[t]he district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions." Fed.R.Civ.P. 72(b). Having carefully reviewed the entire record in this case, the Court finds that the Magistrate Judge correctly applied the Motion to Dismiss standards to the facts presented and properly concluded that dismissal of the entire action is appropriate.

Accordingly, the Court rules as follows:

(1) The Report and Recommendation (Docket Entry No. 37) is hereby ACCEPTED;

(2) the Motion to Dismiss (Docket Entry No. 12) filed by Defendants John Hand and the United States of America is hereby GRANTED;

(3) the second Motion to Dismiss (Docket Entry No. 33) filed by Defendants Michael Eby and Joseph Helmtoller is hereby GRANTED;

(4) the first Motion to Dismiss (Docket Entry No. 22) filed by Defendants Michael Eby and Joseph Helmtoller is hereby DENIED as MOOT; and

(5) this action is hereby DISMISSED WITH PREJUDICE.

Entry of this Order on the docket shall constitute entry of a final judgment in accordance with Federal Rules of Civil Procedure 58 and 79(a).

It is so ORDERED.

A handwritten signature in black ink, appearing to read "Robert L. Echols", written over a horizontal line.

ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE